

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

EDWARD A. JORDAN,

Plaintiff,

v.

CIVIL ACTION NO. 5:02-0488

DEPUTY LAMBERT, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted proposed findings of fact and has recommended that the Court grant Defendants' Motion for Summary Judgment and dismiss this case with prejudice. Plaintiff has filed objections to the Magistrate Judge's Proposed Findings and Recommendation. Having conducted a de novo review of those issues raised in Plaintiff's objections, the Court agrees with the Magistrate Judge for the following reasons.

This case involves a claim by Plaintiff that he was subjected to excessive force in violation of his constitutional rights. In his objections, Plaintiff first argues that the Magistrate Judge improperly concluded that Plaintiff failed to demonstrate he has serious neck and back injuries. Plaintiff asserts that he continues to have medical problems and takes pain medication for his alleged injuries. Moreover, Plaintiff asserts that his medical documentation was confiscated, and

he cannot afford to be evaluated by other physicians. However, as noted by the Magistrate Judge, there is no evidence in the record that Plaintiff has requested copies of his medical records. In addition, Defendants, who obtained Plaintiff's medical records from the Regional Jail and Raleigh General Hospital, produced two reports from Beckley Medical Imaging which indicate no abnormalities to Plaintiff's cervical spine. Other than his own conclusory statements of injury, Plaintiff has produced no evidence on his injuries. Under these circumstances, the Court agrees with the Magistrate Judge and **DENIES** Plaintiff's objection in this respect.

Plaintiff next argues that the Magistrate Judge erred in finding that Deputy Lambert's actions in restraining him were reasonable and necessary in that there was a closer officer, who was aware of Plaintiff's past history of violence,<sup>1</sup> and that officer did not attempt to restrain him. However, the fact that one officer acted to restrain Plaintiff while the other officer watched is not evidence the restraint was not warranted. As found by the Magistrate Judge, Plaintiff, who stands six foot four inches tall and weighs 250 pounds, was getting increasingly agitated during a hearing and he started screaming and raising out of his chair. Although Plaintiff was in handcuffs, there is nothing indicating his legs were shackled to prevent him from moving toward others. In this light, the Court agrees with the Magistrate Judge that Deputy Lambert's conduct was reasonable and necessary and, therefore, **DENIES** this objection by Plaintiff.<sup>2</sup>

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<sup>1</sup>The Magistrate Judge noted that Plaintiff previously was convicted of attempted murder and assault on a correctional officer.

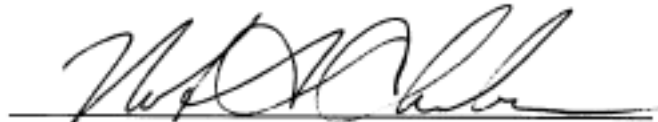
<sup>2</sup>The Court finds no merit to Plaintiff's argument that he was not a pretrial detainee at the time of the incident. The facts show that Plaintiff was arrested and appearing before the Raleigh County Magistrate Court on a capias warrant.

The Court has reviewed the other very general objections Plaintiff makes regarding whether documents were forwarded to him by jail officials and whether he was an inmate when he filed his Complaint. Neither of these arguments change the legal analysis made by the Magistrate Judge. Thus, these objections are **DENIED**.

Accordingly, for the foregoing reasons, the Court **DENIES** Plaintiff's objections, **ADOPTS** the Findings and Recommendation of the Magistrate Judge, **GRANTS** Defendants' Motion for Summary Judgment, **DISMISSES** Plaintiff's Complaint, and **DIRECTS** that this case be dismissed and stricken from the docket of this Court.

The Court **DIRECTS** the Clerk to send a certified copy of this written Opinion and Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented parties.

ENTER: September 28, 2005

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE